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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

J. W. FREE, *Petitioner,*

v.

JAMES F. BLAND, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

Petitioner John W. Free prays that a writ of certiorari issue to review the judgment of the Supreme Court of Texas in the above-entitled case.

OPINIONS BELOW

The District Court of Upshur County, Texas, rendered no opinion. Its judgment (R. 61) appears in Appendix B hereto at p. 3a. The opinions of the Texas Court of Civil Appeals (R. 70) and of the Supreme Court of Texas (R. 78) are reported at 337 S.W. 2d 802 and 344 S.W. 2d 435, respectively. They appear in Appendix B at pp. 5a and 11a, respectively. The

judgment of the Supreme Court of Texas appears in Appendix B at p. 12a. The opinion of that court in *Hilley* v. *Hilley*, which was held by the court to control the instant case, is reported at 342 S.W.2d 565 and appears in Appendix B at p. 13a.

JURISDICTION

The judgment of the Supreme Court of Texas was entered on March 8, 1961 (R. 79). A timely petition for rehearing filed by petitioner was denied by that court on April 5, 1961 (R. 81). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Do the regulations promulgated by the Secretary of the Treasury of the United States with respect to the registration of, and other matters concerning, United States Savings Bonds prescribe merely a convenient method for the discharge by the United States of its obligations on such bonds, or, as the courts of many states have held and the Treasury Department of the United States has consistently urged, do these regulations also, in the absence of fraud, control the beneficial ownership of such bonds irrespective of the laws of particular states?

STATUTE AND REGULATIONS INVOLVED

This case involves the interpretation of certain Regulations promulgated by the Secretary of the Treasury of the United States in the exercise of the authority vested in him by 31 U.S.C. § 757c(a). That statute provides:

> "The Secretary of the Treasury, with the approval of the President, is authorized to issue from time to time, through the Postal Service or otherwise, United States savings bonds and United

States Treasury savings certificates, the proceeds of which shall be available to meet any public expenditures authorized by law, and to retire any outstanding obligations of the United States bearing interest or issued on a discount basis. The various issues and series of the savings bonds and the savings certificates shall be in such forms, shall be offered in such amounts, subject to the limitation imposed by section 757b of this title, and shall be issued in such manner and subject to such terms and conditions consistent with subsections (b)-(d) of this section, and including any restrictions on their transfer, as the Secretary of the Treasury may from time to time prescribe."

The pertinent regulations, 31 C.F.R. § 315.0, *et seq.*, are set forth in Appendix A.

STATEMENT

Petitioner John W. Free and his late wife, Ida Free, lived during the many years of their marriage and until Mrs. Free's death together in the State of Texas (R. 4). During the marriage, in the years 1941 through 1945, petitioner purchased a number of United States Savings Bonds of the "E" and "F" series, using for that purpose community funds of himself and his wife, and registered each of them in the names of himself "or" his wife (R. 5-6).* The relevant regulations of the Secretary of the Treasury provide that under this form of registration the persons named are "coowners" of the bonds (31 C.F.R. § 315.7(a)(2)), and that upon the death of one "the survivor will be

* The bonds were variously registered in the names of "Mrs. Mary Ida Free or John W. Free", "John W. Free or Mrs. Mary Ida Free", "John W. Free or Mary Ida Free", "John W. Free or Mrs. Ida Free", and "J. W. Free or Mrs. Ida Free". In each case the designation referred to petitioner and his wife.

recognized as the sole and absolute owner" (31 C.F.R. § 315.61).

Ida Free died testate in Texas in April 1958. In her will respondent James F. Bland, a son of Ida Free by a previous marriage, was named both executor and the sole legatee (R. 5-6).

In June 1959 petitioner brought suit in the District Court of Upshur County, Texas (R. 3), seeking a judicial declaration that upon the death of his wife petitioner became the sole owner of the bonds above referred to, and that respondent had no interest in said bonds either as executor of the estate of Ida Free or as legatee under her will. Respondent answered, controverting petitioner's claim, and filed a cross-action alleging that because the bonds had originally been purchased with community property of petitioner and Ida Free, respondent became the owner of a one-half interest in the bonds at the date of Ida Free's death or was in any event entitled to a judgment against petitioner for a sum equal to one-half the value of the bonds.

On petitioner's motion for summary judgment (R. 28), the District Court adjudged petitioner to be the owner of the bonds in controversy. At the same time, however, the court entered judgment for respondent against petitioner for one-half the value of the bonds, and declared a lien against the bonds for the amount of this judgment. In substance, therefore petitioner's claim that he was entitled to absolute ownership of the bonds was rejected and respondent's claim was upheld.

Petitioner appealed to the Court of Civil Appeals for the Sixth Supreme Judicial District of Texas, urging that the trial court had erred in failing to follow a controlling decision of the Texas Supreme Court

(*Ricks* v. *Smith*, 318 S.W. 2d 439 (1958)) which had held that questions of ownership of and rights in United States Savings Bonds are controlled not by state law but by the federal regulations, duly promulgated by the Secretary of the Treasury of the United States, under which those bonds are issued. The Court of Civil Appeals affirmed the judgment of the trial court insofar as it found petitioner to be the owner of the bonds, and reversed that judgment insofar as it had awarded to respondent one-half their value, agreeing with petitioner that the case was directly controlled by *Ricks* v. *Smith*, *supra*, which had held the federal regulations to be applicable and dispositive. The court expressly noted that respondent had not alleged that petitioner's action in purchasing and registering the bonds had constituted a fraud, actual or constructive, upon petitioner's wife, and that the facts of record demonstrated the absence of any fraud.

Respondent sought review of this judgment in the Texas Supreme Court by writ of error (R. 76). While the application for the writ was pending that court, in *Hilley* v. *Hilley*, 342 S.W. 2d 565 (1961), a case involving not United States Savings Bonds but corporate securities, held that a coownership form of registration did not serve to alter the normal operation of Texas community property rules. In the course of its opinion the court overruled its prior decision in *Ricks* v. *Smith*, stating that "the federal regulations [dealing with the ownership of United States Savings Bonds] do not override our local laws in matters of purely private ownership * * *", and that accordingly United States Savings Bonds registered in the names of a husband and a wife as coowners should on the death of one be treated not as the property of the other, as

provided by the regulations, but, under Texas property law, as community property. On the basis of this decision the Texas Supreme Court thereupon reversed the judgment of the Court of Civil Appeals in this case and affirmed that of the trial court (R. 78).

The federal question which petitioner asks this Court to review on writ of certiorari was, in accordance with Texas practice, raised in petitioner's brief in the Court of Civil Appeals, both in terms and by reliance on *Ricks* v. *Smith, supra* (R. 69, pp. 6-15), and was decided by that court in petitioner's favor on the authority of *Ricks* v. *Smith*. The question was again raised in petitioner's reply to respondent's Application for Writ of Error to the Supreme Court of Texas (R. 77, pp. 3-7), which was filed prior to that court's decision in *Hilley* v. *Hilley,* and after it was decided by that court in a manner adverse to petitioner on the authority of *Hilley* v. *Hilley,* was again raised in a motion for rehearing addressed by petitioner to that court (R. 80).

REASONS FOR GRANTING THE WRIT

The Supreme Court of Texas has held that Texas law governing the transfer of personal property may be applied to United States Savings Bonds and their proceeds in a manner which derogates from the interests of the person recognized by the federal regulations under which those bonds were issued as their sole and absolute owner, and which appears to violate the command of those regulations that no judicial determination shall "defeat or impair the rights of survivorship conferred by these regulations upon a surviving coowner or beneficiary * * *." See 31 C.F.R. § 315.20. In so doing that court has resolved a fre-

quently-recurring federal question as to the proper interpretation of the pertinent regulations in a manner contrary to the resolution of that question by the courts of a great majority of the many other states which have had occasion to rule upon it, and has introduced doubt, confusion and uncertainty into an area where the exercise by the United States of its constitutional power to borrow money on conditions uniform throughout the Country is intimately involved and where the property interests of literally millions of citizens are at stake.

Petitioner does not understand the Texas Supreme Court to have held that the federal regulations upon which he relies are invalid if given the interpretation for which he contends. Rather, the basic question involved in this case is one of statutory interpretation:[1] whether those regulations are intended merely to provide a convenient method whereby the United States can discharge its obligation on United States Savings Bonds by payment, leaving the states entirely free to order any retransfer of the proceeds of such bonds which they deem necessary to comport with their personal property law, or whether the regulations are intended to and do have a broader reach and effect.

The decision below, in holding that the relevant regulations do not override concepts of Texas property law dealing with the methods by which community property may be transferred, is in direct conflict with the

[1] Federal regulations promulgated in the proper exercise of a constitutional power properly delegated by Congress of course have in all respects the force and effect of federal law, United States v. Birdsall, 233 U.S. 223; Maryland Cas. Co. v. United States, 251 U.S. 342; United States v. Janowitz, 257 U.S. 42, and accordingly by virtue of Article VI of the Constitution of the United States are "the supreme law of the land * * *."

holdings of the courts of many states which have rejected the "mere convenience to the United States" interpretation of those regulations.[2] Among these decisions, which have recognized that the regulations are designed to make possible the creation of interests in federal obligations which will receive uniform recognition and treatment throughout the United States, and that they thus must be interpreted, at least in the absence of fraud, to determine and control the beneficial ownership of United States Savings Bonds irrespective of the law of a particular state, are:

Alabama (*Ex parte Little*, 67 So. 2d 818 (1953); *Chambless* v. *Black*, 35 So. 2d 348 (1948))
Arizona (*Lee* v. *Anderson*, 70 Ariz. 208, 218 P. 2d 732 (1950))
Arkansas (*Myers* v. *Hardin*, 186 S.W. 2d 925 (1945))
Florida (*In re Briley's Estate*, 21 So. 2d 595 (1945))
Georgia (*Knight* v. *Wingate*, 52 S.E. 2d 604 (1949))
Kansas (*Lemon* v. *Foulston*, 169 Kan. 372, 219 P. 2d 388 (1950))
Maine (*Berman* v. *Frendel*, 148 A. 2d 93 (1959); *Harvey* v. *Rackliffe*, 41 A. 2d 455 (1945))
Massachusetts (*Reynolds* v. *Reynolds*, 90 N.E. 2d 338 (1950))
Montana (*Nelson* v. *Wheeler*, 256 P. 2d 1080 (1953))
Nevada (*Stephens* v. *First Nat'l Bank*, 196 P. 2d 756 (1948))

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[2] The Texas court, although in the distinct minority of the courts which have ruled on this question, is not alone. See, *e.g.*, Slater v. Culpepper, 222 La. 962, 64 So. 2d 234 (1953). Accordingly, its decision cannot be dismissed as a mere aberration.

New Jersey (*Reynolds* v. *Danko*, 134 N.J. Eq. 560, 36 A. 2d 420 (1944); *Franklin Washington Trust Co.* v. *Beltram*, 133 N.J. Eq. 11, 29 A. 2d 854 (1943))
New York (*In re Deyo's Estate*, 180 Misc. 32, 42 N.Y.S. 2d 379 (Surr. N.Y. County 1943))
North Carolina (*Ervin* v. *Conn*, 225 N.C. 267, 34 S.E. 2d 402 (1945))
Ohio (*In re DiSanto's Estate*, 142 Ohio St. 223, 51 N.E. 2d 639 (1943))
Oklahoma (*Barton* v. *Hooker*, 283 P. 2d 514 (1955))

Similarly, the decision below is in direct conflict with the formally expressed view of the Treasury Department of the United States, which is charged by law with the administration of the Savings Bond program, to the effect that "* * * state laws, as for example, the law of wills or of intestate succession, or laws governing given forms of tenancy, or the common law related to delivery in the case of gifts, have no bearing whatsoever on the problem and * * * judicial decisions based thereon are in derogation of the supreme law of the land." *Statement of the Treasury Department on the Rights of Surviving Coowners and Beneficiaries of Savings Bonds*, October 1, 1958 (Fifth Revision).[3]

It has occasionally been held that in instances where to give conclusive effect to the relevant regulations would be to permit or further the perpetration of a fraud, these regulations need not be interpreted as demanding that result. See, *e.g.*, *Union Nat'l Bank*

[3] In view of this Statement of Position by the affected Federal Department, and in view of the direct interest of the United States in the proper resolution of the question here presented, this Court may think it appropriate to ask the United States for an expression of its views at this or a subsequent stage in this proceeding.

v. Jessell, 215 S.W. 2d 474 (Mo. 1948); *Hill* v. *Havens*, 48 N.W. 2d 870 (Iowa 1951). Whether or not decisions of this tenor are correct, it is plain that they have no application or relevance to the instant case. As pointed out above, the Texas Court of Civil Appeals expressly held that no fraud, actual or constructive, had been pleaded or established by respondent, noting that more than twelve years passed between the purchase of the bonds and the death of Mrs. Free, and that had petitioner predeceased his wife the bonds would under the regulations have passed to her outright. In reversing the judgment of that court the Texas Supreme Court did not purport to disturb this holding, but rather rested its decision exclusively on the altogether different, and far broader, grounds articulated by it in *Hilley v. Hilley, supra*, a case in which concepts of fraud played no part.[4]

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[4] That the rationale of Hilley had nothing to do with fraud is demonstrated by the fact that the court in that case expressly overruled Ricks v. Smith and thus decided that under Texas law the estate of a deceased coowner of United States Savings Bonds purchased with community property is entitled to one-half their value even if it was the deceased coowner who originally purchased the bonds.

Under the law of Texas petitioner was at liberty during the period of his marriage to dispose of the community property, even for his own independent purposes, in any way he saw fit so long as that disposition was not made for the purpose of defrauding his wife. Tex. Rev. Civ. Stat. art. 4619; Locke v. Locke, 143 S.W. 2d 637 (Tex. Civ. App. 1940); Shaw v. Shaw, 28 S.W. 2d 173 (Tex. Civ. App. 1930); *cf.* Warthan v. Haynes, 155 Tex. 143, 288 S.W. 2d 481 (1956).

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be granted.

Respectfully submitted,

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